IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 3355 of 2007(Y)

PETITIONER:

KUNHABDULLA M., ARABIC TEACHER,
DEVARKOVIL M.U.P.SCHOOL, P.O.THALIYIL,
KUTTIYADI, KOZHIKODE DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL
EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE.

3. THE ASSISTANT EDUCATIONAL OFFICER,
KUNNUMMAL, KOZHIKODE DIST.

BY GOVERNMENT PLEADER SHRI.P.NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.3355/2007.

Petitioner's Exhibits:-

P1: Copy of GO(Rt.)No.331/2006 dtd.10-8-2006.

P2: Copy of the relevant pages of the service book of the petitioner.

P3: Copy of the relevant pages of the pay bill with respect to various teachers in Devarkovil MUP School, October, 2006.

P4: Copy of the relevant pages of the pay bill with respect to various teachers in Devarkovil MUP School, November, 2006.

P5: Copy of the representation dtd.12-12-2006 filed by the petitioner before the AEO, Kunnummal.

P6: Copy of the order dtd.29-12-2006 issued by the AEO, Kunnummal.

Respondents' Exhibits:- **Nil.**

-// true copy //-

P.A. To Judge.

kvs/-

K.K.DENESAN, J.

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WP(C).No.3355 OF 2007-Y.

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Dated this the 15th day of March, 2007.

J U D G M E N T

The petitioner availed leave from 26-9-2006 to 25-10-2006. In the normal course he has to rejoin duty on 26-10-2006. However, as he had attained the age of superannuation on 5-10-2006, he ought to have reported for duty on 6-10-2006, if he wanted to get the benefit of Ext.P1 amendment to Rule 60(a) Part I of K.S.R., contends the respondents. The relevant part of Ext.P1 reads:

> "If they are on leave on the day they attain the age of 55 years and fail to rejoin duty on the first working day immediately after the date of superannuation they shall be retired with effect from the date of superannuation under sub-rule (a) of rule 60."

Therefore, the petitioner has no right to continue in service till the end of the academic year. He will be deemed to have retired on the date of attaining the age of superannuation, namely, 5-10-2006 because he was actually on leave on that day, as also, the succeeding

days.

2. The reliefs prayed for by the petitioner for a direction to the respondents to allow him to continue as Arabic Teacher till the end of the academic year ie 31-3-2007 cannot, therefore, be granted. Ext.P6 order, for the above reason, is not liable to be quashed.

3. Counsel for the petitioner points out that the petitioner has been continuing under the orders of this Court and the claim of the petitioner for emoluments for the period during which he had actually worked may be left open to be decided in other proceedings. The question relating to the right of the petitioner for emoluments is therefore left open.

The Writ petition fails and it is accordingly dismissed.

K.K.DENESAN, JUDGE.

kvs/-